

Curtis Sobel (CS-0964)
Sobel & Kelly, P.C.
Attorneys for Defendants
464 New York Avenue, Suite 100
Huntington, New York 11743
(631) 549-4677

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
WAYNE BAKER,

Plaintiff(s),

- against -

CITY OF NEW ROCHELLE; STATE OF NEW YORK;
POLICE OFFICER MORETTI, INDIVIDUALLY; CAPTAIN
"JOHN DOE" Individually of New Rochelle City Police;
SAFEWAY TOWING and COLLISION, CITY OF NEW
ROCHELLE, TOWING COMPANY,

Defendant(s).
-----X

Civil Action No.

08-CV-0561(SCR)(GAY)

VERIFIED ANSWER

The defendant(s), D&G AUTO REPAIR INC. d/b/a SAFEWAY COLLISION s/h/a SAFEWAY TOWING and COLLISION, and ELITE TOWING, INC. d/b/a SAFEWAY TOWING s/h/a CITY NEW ROCHELLE, TOWING COMPANY, by their attorneys, SOBEL & KELLY, P.C., answering the Complaint of the plaintiff, WAYNE BAKER, alleges upon information and belief:

FIRST: Defendant denies, upon information and belief, each and every allegation contained in the unnumbered paragraph(s) preceding paragraph "1" of the Complaint.

SECOND: Defendant denies, upon information and belief, each and every allegation contained in paragraph(s) "1" through "6", all inclusive of the Complaint

**AS AND FOR A FIRST AFFIRMATIVE
DEFENSE DEFENDANT SETS FORTH AND ALLEGES**

THIRD: That if the plaintiff(s) sustained the injuries and damages alleged in the Complaint, the same were wholly caused by the culpable conduct of and/or assumption of the risk of the plaintiff(s) and the defendant is entitled to judgment dismissing the Complaint.

That if the plaintiff(s) sustained the injuries and damages alleged in the Complaint, the same were caused, if not in whole, then in part, by the culpable conduct and/or assumption of the risk of the plaintiff(s) and the defendant is entitled to judgment assessing and fixing the degree to which the culpable conduct of the plaintiff(s) contributed to the said injuries and damages and the proportion to which such damages shall be diminished thereby.

**AS AND FOR A SECOND AFFIRMATIVE
DEFENSE PURSUANT TO ARTICLE 16**

FOURTH: In the event that the plaintiff(s) recover any judgment against this defendant, then this defendant demands that any such judgment be diminished in accordance with Article 16 of the CPLR and more particularly Section 1601 thereof.

**AS AND FOR A THIRD AFFIRMATIVE
DEFENSE DEFENDANT SETS FORTH AND ALLEGES**

FIFTH: That the Court has no personal jurisdiction over the answering defendants.

**AS AND FOR A FOURTH AFFIRMATIVE
DEFENSE DEFENDANT SETS FORTH AND ALLEGES**

SIXTH: That the action is barred by reason of the applicable statute of limitations.

**AS AND FOR A FIFTH AFFIRMATIVE
DEFENSE DEFENDANT SETS FORTH AND ALLEGES**

SEVENTH: That the complaint fails to state a cause of action against the defendant.

**AS AND FOR A SIXTH AFFIRMATIVE
DEFENSE DEFENDANT SETS FORTH AND ALLEGES**

EIGHTH: Defendant was not properly served with summons and complaint. Therefore, the Court lacks personal jurisdiction over defendant.

**AS AND FOR A SEVENTH AFFIRMATIVE
DEFENSE DEFENDANT SETS FORTH AND ALLEGES**

NINTH: That plaintiffs' First Cause of Action for punitive damages is improper and may not be maintained as a separate cause of action. See Stewart v. Mutual Clothing Co. 195 Misc. 244, 91 NYS.2d 338 and Knibbs v. Wagner, A.D.2d 987, 222 NYS.2d 469).

**AS AND FOR A EIGHTH AFFIRMATIVE
DEFENSE DEFENDANT SETS FORTH AND ALLEGES**

TENTH: That upon information and belief, the Plaintiff abandoned the vehicle which is the subject matter of this lawsuit and therefore cannot recover herein for the loss of same.

**AS AND FOR A NINTH AFFIRMATIVE
DEFENSE DEFENDANT SETS FORTH AND ALLEGES**

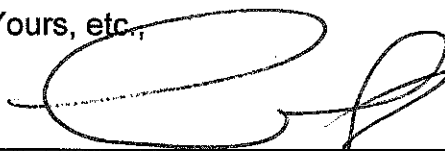
ELEVENTH: That upon information and belief, the Plaintiff was given full and fair opportunity to recover his property, refused to pay for storage and towing lawfully charged in regard to the disposition of same, and thereafter executed a document or documents releasing the vehicle to the defendants and authorizing its disposition waiving all future rights to recover said vehicle.

Based upon the foregoing, Plaintiff cannot now commence and prosecute the instant lawsuit as he has voluntarily waived all rights for recovery of the vehicle.

WHEREFORE, defendant(s) D&G AUTO REPAIR INC. d/b/a SAFEWAY COLLISION s/h/a SAFEWAY TOWING and COLLISION, and ELITE TOWING, INC. d/b/a SAFEWAY TOWING s/h/a CITY NEW ROCHELLE, TOWING COMPANY, demand judgment dismissing the Complaint in its entirety, or in the alternative, for judgment diminishing the damages recoverable by the plaintiff(s) herein, in proportion to the culpable conduct and negligence attributable to the plaintiff(s), together with the costs and disbursement of this action.

Dated: Huntington, New York
 August 28, 2008

Yours, etc.,



CURTIS SOBEL (CS-0964)
SOBEL & KELLY, P.C.
Attorneys for Defendant
D&G AUTO REPAIR INC. d/b/a SAFEWAY
COLLISION s/h/a SAFEWAY TOWING and
COLLISION, and ELITE TOWING, INC. d/b/a
SAFEWAY TOWING s/h/a CITY NEW
ROCHELLE, TOWING COMPANY
464 New York Avenue, Suite 100
Huntington, New York 11743
631/549-4677

TO: WAYNE BAKER
 Plaintiff, Pro Se
 133 North 6th Avenue, 2nd Floor
 Mount Vernon, New York 10550

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKLER, LLP
Attorneys for Defendants
CITY OF NEW ROCHELLE and
POLICE OFFICER DINA MORETTI
3 Gannett Drive
White Plains, New York 10604-3407
(914) 323-7000


STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss:

I, CURTIS SOBEL, an attorney admitted to practice in the Courts of New York State, state that I am the attorney for the defendant in the within action; I have read the foregoing ANSWER and know the contents thereof; the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by defendant, is that the defendant's principal place of business is in a County other than the County wherein I maintain my office.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: Contents of file which constitutes attorney's work product.

I affirm that the foregoing statements are true, under penalties of perjury.

Dated: Huntington, New York
 August 28, 2008


CURTIS SOBEL(0964)

DECLARATION OF SERVICE BY MAIL

08-CV-561(SCR)(GAY)

STATE OF NEW YORK)

ss:

COUNTY OF SUFFOLK)

LUCY ANN DeSIMONE, hereby declares, pursuant to 28 U.S.C., Section 1746 and Local Civil Rule 1.10 of this Court, that I am not a party to the action; I am over 18 years of age and reside at Middle Island, New York 11953

On 08/28/2008, I served the within Verified Answer, by depositing a true copy of the same enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, addressed to each of the following persons at the last known address set forth after each name:

TO:

WAYNE BAKER
133 North 6th Avenue, 2nd Floor
Mount Vernon, New York 10550

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKLER, LLP
3 Gannett Drive
White Plains, New York 10604-3407

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 08 /28/2008


LUCY ANN DeSIMONE

WAYNE BAKER,

Plaintiff(s),

-against-

CITY OF NEW ROCHELLE; STATE OF NEW YORK;
POLICE OFFICER MORETTI, INDIVIDUALLY; CAPTAIN
"JOHN DOE" Individually of New Rochelle City Police;
SAFEWAY TOWING and COLLISION, CITY OF NEW
ROCHELLE, TOWING COMPANY,

Defendant(s).

VERIFIED ANSWER

Signature (Rule 130-1.1 a)



CURTIS SOBEL (0964)

SOBEL & KELLY, P.C.
Attorneys for Defendants
D&G AUTO REPAIR INC. d/b/a SAFEWAY COLLISION s/h/a SAFEWAY
TOWING and COLLISION, and ELITE TOWING, INC. d/b/a SAFEWAY
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